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GOOGLE INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

16 ORACLE AMERICA, INC.,  
17  
18 Plaintiff,  
19 v.  
20 GOOGLE INC.,  
21 Defendant.

Case No. 3:10-cv-03561-WHA

**DECLARATION OF DANIEL  
BORNSTEIN IN SUPPORT OF  
DEFENDANT GOOGLE INC.'S MOTION  
FOR SUMMARY JUDGMENT ON  
COUNT VIII OF PLAINTIFF ORACLE  
AMERICA'S AMENDED COMPLAINT**

Judge: Hon. William Alsup

Hearing: 2:00 p.m., September 15, 2011

1 I, Daniel Bornstein, declare as follows:

2 1. I am and have been employed by Google since October 2005 as an engineer for  
3 the Android team. I submit this declaration in support of Defendant Google Inc.'s Motion for  
4 Summary Judgment on Count VIII of Plaintiff Oracle America, Inc.'s Amended Complaint. I  
5 make this declaration based on my own personal knowledge. If called as a witness, I could and  
6 would testify competently to the matters set forth herein.

7 2. The Android platform is a freely-distributed, open-source software stack for  
8 mobile devices that includes an operating system, middleware and key mobile applications. In  
9 the early days of its development, Android, Inc. and then Google (which purchased Android, Inc.  
10 in 2005) pursued numerous possibilities for developing the platform, including a technology  
11 partnership with Sun (incorporating Sun's implementation of its virtual machine and Java  
12 language libraries into the platform), as well as developing Android from the ground up. When  
13 the partnership negotiations failed, Google decided to concentrate fully on the ground up  
14 solution, using only new materials and publicly-available open-source materials.

15 3. Android was built to be a truly "open" platform. Android is made available under  
16 permissive open source license terms, primarily the Apache License, Version 2.0. The  
17 information and source code for the Android platform is freely available for developers,  
18 manufacturers, or any member of the general public to download at <http://source.android.com>  
19 and <http://developer.android.com>. The software development kit ("SDK") for the Android  
20 platform was first publicly released by Google in 2007.

21 4. Android provides access to a wide range of useful libraries and tools that can be  
22 used to build rich mobile applications by interfacing with hardware that is typically not available  
23 on desktop platforms. For example, Android enables developers to obtain the location of the  
24 mobile device using the phone's built-in GPS technology, or to create photography applications  
25 using the built-in camera. Developers for Android can create software applications for Android-  
26 based mobile devices using various programming languages, including the Java programming  
27 language. Other languages supported by Android include C, C++, and JavaScript, among others.

28 5. Android contains over 50 thousand files and over 11 million lines of code, and is

1 built on an underlying Linux kernel, an open source operating system kernel that communicates  
2 directly with the hardware device and manages core functions and communications (such as  
3 those relating to memory management, process management and hardware drivers) between the  
4 applications and the device. A diagram illustrating the major components of the Android  
5 platform is attached hereto as Exhibit A. This diagram is available on the Internet at  
6 <http://developer.android.com/images/system-architecture.jpg>.

7         6.       The Android platform includes, among other things, the Android SDK and the  
8 Dalvik Virtual Machine (“VM”). The Android SDK is a comprehensive set of development  
9 tools provided to software developers who wish to create applications for Android devices. The  
10 Dalvik VM is a new intermediate software layer, created by Google, that allows programs,  
11 including those written in the Java programming language, to run on the Android platform. The  
12 Dalvik VM and Android platform accomplish this function in part by using a collection of 168  
13 libraries (also referred to as “packages”) referred to as the “Android Core Libraries.” I led the  
14 design and creation of the Dalvik VM and related libraries at Google.

15         7.       Some of the Android Core Libraries incorporate and were in part derived from  
16 API libraries from Apache Harmony (“Harmony” or the “Harmony Project”).

17         8.       Others of the Android Core Libraries were developed by an independent  
18 contractor that Google retained as part of the early development work on Android. Google  
19 informed the contractor that it was interested in interoperability with version 1.5 (now known as  
20 version 5.0) of the Java 2 Standard Edition platform. The contractor was retained and instructed  
21 to write new code, reuse and improve original code created by Google, or import and improve  
22 code from permissively licensed (or equivalent) open source projects, such as the Harmony  
23 Project—but not from any proprietary materials, including Sun materials. The files developed  
24 by this independent contractor include the following eight Android files: AclEntryImpl.java;  
25 AclImpl.java; GroupImpl.java; OwnerImpl.java; PermissionImpl.java; PrincipallImpl.java;  
26 PolicyNodeImpl.java; and AclEnumerator.java. Each of those files is a “test” file for the  
27 purpose of verifying that certain aspects of the corresponding program file worked correctly.  
28 These files do not have any effect on the code that ships on Android devices, and there is no

1 reason that these files would ever be present on Android devices. In fact, after this lawsuit was  
2 filed, Google removed these files from the Android platform, and has not replaced them with  
3 new files.

4 9. Two Android files, CodeSourceTest.java; and  
5 CollectionCertStoreParametersTest.java, were developed by the same independent contractor  
6 discussed in the preceding paragraph. Those files appear to have been derived, at least in part,  
7 from Harmony files. After this lawsuit was filed, Google removed from these files comments  
8 that appear to have come from the original Harmony files.

9  
10 I declare under penalty of perjury that the foregoing facts are true and correct.  
11 Executed on August 1, 2011 in Mountain View, California.

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14 Daniel Bornstein  
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